

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs January 24, 2006

SYLVESTER LEE MOSLEY v. STATE OF TENNESSEE

Appeal from the Criminal Court for Davidson County
Nos. 2003-D-2501; 2003-D-2788 Seth Norman, Judge

No. M2005-01706-CCA-R3-PC - Filed April 7, 2006

The petitioner, Sylvester Lee Mosley, appeals the Davidson County Criminal Court's summary dismissal of his petition for post-conviction relief from his guilty pleas to facilitation of first degree murder, a Class B felony, and possession with intent to sell or deliver a Schedule II controlled substance and resulting effective sentence of eighteen years in the Department of Correction. He contends his petition stated a cognizable claim for relief under the Post-Conviction Procedure Act, thereby entitling him to counsel and an evidentiary hearing. We conclude that the petition states a cognizable claim for relief and that the trial court erred in summarily dismissing the petition. We reverse the trial court's order dismissing the petition and remand this case to the trial court for the appointment of counsel and an evidentiary hearing.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Reversed; Case Remanded

JOSEPH M. TIPTON, J., delivered the opinion of the court, in which GARY R. WADE, P.J., and JAMES CURWOOD WITT, JR., J., joined.

Sylvester L. Mosley, Clifton, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; Preston Shipp, Assistant Attorney General; Victor S. (Torry) Johnson, III, District Attorney General; Dan Hamm, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The record reflects that the petitioner pled guilty in November 2004 to one count of facilitation of first degree murder and one count of possession of a Schedule II controlled substance with the intent to sell or deliver it. However, the record does not contain the petitioner's judgments of conviction, and therefore we are unable to determine the felony classification of the defendant's possession conviction and the length of sentence for each conviction. In any event, it appears the trial court sentenced the petitioner to an effective sentence of eighteen years in the Department of

Correction. On May 6, 2005, the petitioner filed a pro se petition for post-conviction relief alleging, among other things, that his guilty plea was unknowing and involuntary and that he received the ineffective assistance of counsel.

Regarding the unknowing and involuntary guilty pleas claim, the petitioner states that his attorney failed to inform him of the weakness of the state's case. He claims the prosecution also withheld exculpatory evidence in the nature of eyewitness testimony. He further contends he was coerced by his attorney to plead guilty. Regarding the ineffective assistance of counsel claim, the petitioner again states that his attorney failed to discuss with him the strength or lack thereof of the state's case and failed to discover witness statements withheld by the prosecution.

On June 9, 2005, the Davidson County Criminal Court entered an order dismissing the petitioner's petition for post-conviction relief without appointing the petitioner counsel or affording him the opportunity to have an evidentiary hearing. On appeal, the petitioner contends the trial court erred in summarily dismissing his petition. He claims his petition presented a colorable claim for relief under the Post-Conviction Procedure Act, thereby entitling him to the appointment of counsel and an evidentiary hearing. The state contends that the petition does not state a colorable claim and that the trial court did not err in summarily dismissing the petition. We conclude the petition does state a colorable claim.

Whether a trial court properly dismissed a petition for post-conviction relief for failure to state a claim for relief is reviewed as a question of law. See Burnett v. State, 92 S.W.3d 403, 406 (Tenn. 2002). Thus, our review of the trial court's dismissal of the petition is de novo. See id.; Fields v. State, 40 S.W.3d 450, 457 (Tenn. 2001).

The Post-Conviction Procedure Act states that a petition for post-conviction relief must specify the grounds for relief and set forth facts to establish a colorable claim for relief. See T.C.A. § 40-30-106(d). "A colorable claim is a claim, in a petition for post-conviction relief, that, if taken as true, in the light most favorable to petitioner, would entitle petitioner to relief under the Post-Conviction Procedure Act." Tenn. Sup. Ct. R. 28, § 2(H). When the facts, taken as true, fail to demonstrate that the petitioner is entitled to relief, then the trial court may dismiss the petition. T.C.A. § 40-30-106(f). When the trial court concludes that a petition does not present a "colorable claim," it may summarily dismiss the petition without appointing counsel. See Blair v. State, 969 S.W.2d 423, 424 (Tenn. Crim. App. 1997).

In a light most favorable to the petitioner, the petition alleges that the petitioner's attorney failed to advise him properly of the relative strength of the state's case and coerced him into pleading guilty. We conclude these allegations establish a colorable claim that the petitioner's guilty pleas were unknowing and involuntary, entitling the petitioner to the appointment of counsel and an evidentiary hearing.

Based upon the foregoing and the record as a whole, we reverse the judgment of the trial court and remand this case for further proceedings consistent with this opinion.

JOSEPH M. TIPTON, JUDGE